

## ORDINANCE NO. 3938

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, RELATING TO COLLECTIVE GARDENS AND THE RECREATIONAL USE OF MARIJUANA, ESTABLISHING AN IMMEDIATE EMERGENCY MORATORIUM ON THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES OR USES RELATING TO COLLECTIVE GARDENS, MARIJUANA PRODUCTION, MARIJUANA PROCESSING, OR MARIJUANA RETAILING, TO BE IN EFFECT UNTIL THE CITY OF EDMONDS ADOPTS ZONING REGULATIONS ADDRESSING SUCH MARIJUANA USES, AND ESTABLISHING AN IMMEDIATE EMERGENCY MORATORIUM ON THE SUBMISSION OF ANY BUSINESS LICENSE APPLICATIONS FOR SUCH USES, SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM, TO ALLOW THE WASHINGTON STATE LIQUOR CONTROL BOARD AN OPPORTUNITY TO COMPLETE ITS RULEMAKING FOR THE LICENSING OF SUCH USES AND TO ALLOW THE CITY TO STUDY THE SECONDARY LAND USE IMPACTS OF SUCH USES, ESTABLISHING THE DATE OF THE PUBLIC HEARING ON THE MORATORIUM AND DECLARING AN EMERGENCY.

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WHEREAS, the Washington State legislature passed Engrossed Second Substitute Senate Bill (ESSSB) 5073, Medical Cannabis, to become effective on July 22, 2011; and

WHEREAS, the Governor vetoed 36 of the 58 sections of this bill; and

WHEREAS, Initiative Measure No. 692, approved by the voters of the State of Washington on November 3, 1998, and now codified as Chapter 69.51A RCW, created a limited affirmative defense to criminal marijuana charges under state (not federal) law if the person demonstrates that he or she is a qualifying patient or a designated provider as defined in Chapter 69.51A RCW; and

WHEREAS, the state legislature has amended the law three times, with the most recent amendment occurring during the 2011 legislative session as set forth in ESSSB 5073; and

WHEREAS, the U.S. Attorneys for Washington wrote a letter dated April 14, 2011 to Governor Gregoire that reiterated that marijuana possession, production and distribution is a federal criminal offense and that State workers would not be immune from prosecution under federal law even if state law decriminalized the use, possession and production for medical purposes; and

WHEREAS, Section 1102 of ESSSB 5073 provides that a city may adopt zoning requirements, business licensing requirements, health and safety requirements and business taxes as those requirements relate to the production, processing, or dispensing of medical marijuana; and

WHEREAS, the Washington voters approved Initiative 502 in 2012, which “authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and adds a new threshold for driving under the influence of marijuana”; and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana producers “to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers” (I-502, Sec. 4(1)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana processors to “process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers” (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license a marijuana retailer to “sell usable marijuana and marijuana-infused products at retail in retail outlets” (I-502, Sec. 4(3)); and

WHEREAS, Under I-502, before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the incorporated city, and the city has the right to file its written objections to such license within 20 days after transmittal of the notice of application, but the Board makes the final decision whether to issue a license (I-502, Sec. 7(a)); and

WHEREAS, I-502 establishes certain siting limitations on the Washington State Liquor Control Board’s issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Section 8); and

WHEREAS, I-502 contemplates that the Washington State Liquor Control Board will adopt rules to carry the provisions of I-502 into effect, which includes the equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by which licensees may transport and deliver marijuana and marijuana products (among other things), (I-502, Sec. 9); and

WHEREAS, I-502 contemplates that the Washington State Liquor Control Board will adopt more rules on or before December 1, 2013 to determine the number of retail outlets that may be licensed in each county (among other things), (I-502, Sec. 10); and

WHEREAS, I-502 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults 21 years of age or over (I-502, Sec. 13); and

WHEREAS, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, the Washington State Liquor Control Board is required to establish rules necessary to implement I-502 by December 1, 2013; and

WHEREAS, the Washington State Liquor Control Board will begin accepting applications for the production, processing and retail sale of marijuana after the rules are implemented; and

WHEREAS, at this time, no Washington legislative act reconciles Initiative Measure No. 502 and RCW 69.51A; and

WHEREAS, federal law, as set forth in 21 U.S.C. S.841(a), makes it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance and pursuant to 21 U.S.C. S.812, marijuana is a Schedule I controlled substance; and

WHEREAS, at this time, no Washington legislative act or court decision reconciles Washington law with applicable Federal law; and

WHEREAS, at this point in time, the City of Edmonds does not have any regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business license; and

WHEREAS, based on the licensing scheme in I-502, which prohibits anyone from engaging in the activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board, the City will not be issuing any business license for the purposes described in I-502 unless the applicant demonstrates that he/she has first received the appropriate license from the State; and

WHEREAS, the uses described in I-502 have never been allowed in any state or city in the United States, and City needs time to study the secondary land use impacts of these marijuana uses and the various development standards that should be addressed to mitigate these impacts before adoption of any regulatory ordinance or issuance of any business licenses; and

WHEREAS, the Edmonds City Council therefore believes a moratorium to preserve the status quo is necessary, until the State Liquor Control Board definitively acts to establish a complete set of rules for the licensing of all of the new marijuana facilities and uses identified in I-502, and until the Edmonds City Council can study, draft, hold public hearings and adopt the appropriate regulations to address these new uses; and

WHEREAS, at this time, the Edmonds City Council does not have sufficient information to consider the potential secondary impacts from collective gardens or recreational marijuana facilities, the regulations that should be enacted or the legal implications of taking pre-mature action; and

WHEREAS, Section 36.70A.390 of the Revised Code of Washington authorizes the City Council to adopt an immediate moratorium for a period of up to six months without holding a public hearing on the proposal provided that a public hearing is held within at least sixty days of its adoption,

WHEREAS, the City Council desires to impose an immediate six month moratorium on the acceptance of any development permit application or business license application for the siting, location or operation of any collective garden, marijuana processor, marijuana producer, or marijuana retailer; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS DOES ORDAIN AS FOLLOWS:

**Section 1. Marijuana Definitions.**

A. "Cannabis or Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

B. “Collective Garden” means a facility, building, use, access-point or other property, where qualifying patients share responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use as set forth in RCW 69.51A.085 and subject to the limitations therein.

C. “Marijuana processor” means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

D. “Marijuana producer” means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

E. “Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.

F. “Marijuana retailer” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

G. “Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

H. “Usable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.

**Section 2: General Definitions.**

A. "Exempt development permits" shall include any permit application for a structure or use/operation of property for collective gardens, marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance, that is subject to the vested rights doctrine, and that was submitted to the City and determined by the City staff to be complete on or before the effective date of this Ordinance.

B. "Non-Exempt development permits or Non-exempt business license" shall include any permit or business license application for a structure or use/operation of property for collective gardens, marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance, that is:

1. a permit application that is not subject to the vested rights doctrine and/or that was submitted to the City after the effective date of this Ordinance; and/or

2. a business license application for use/operation of property for a collective garden, marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance that was submitted to the City either before or after the effective date of this Ordinance.

**Section 3. Purpose.** The purpose of this moratorium is to allow the City adequate time to study the secondary land use impacts associated with the location and siting of structures and uses in which collective gardens, marijuana production, marijuana processing or marijuana retailing may take place. In addition, the moratorium will allow the City adequate time to study I-502, and to await the administrative rules that the Liquor Control Board will develop by December of 2013. The City's goal is to ultimately draft zoning and business licensing regulations to address such

developments and uses, to hold public hearings on such draft regulations and to adopt such regulations.

**Section 4. Moratorium Imposed.** The City Council imposes an immediate six-month moratorium on the acceptance of all non-exempt development permit and business license applications, as defined in this Ordinance. All such non-exempt development permit and business license applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development permit applications, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

**Section 5. Duration of Moratorium.** The moratorium imposed by this Ordinance shall commence on the date of the adoption of this Ordinance. As long as the City holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 6 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the events described in Section 3 have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

**Section 6. Public Hearing on Moratorium.** Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption. During the next Council meeting immediately following the hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

**Section 7. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 8. Declaration of Emergency.** The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the City's acceptance of non-exempt development applications, such applications could become vested, leading to development or a use of property that is incompatible with I-502, the rules that will be adopted by the Liquor Control Board or the laws adopted by the City of Edmonds. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights. Any use currently in operation as a collective garden, marijuana producer, marijuana processor or marijuana retailer without a valid City business license on the date of the passage of this Ordinance is not a legal non-conforming use.

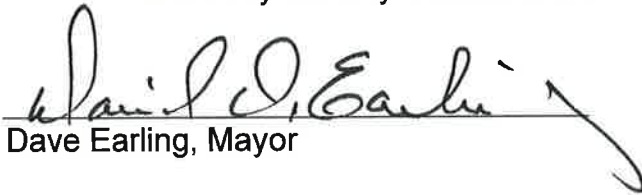
**Section 9. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**Section 10. Effective Date.** This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, as long as it is approved by a



majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

PASSED by the City Council of Edmonds this 20<sup>th</sup> day of August, 2013.

  
Dave Earling, Mayor

AUTHENTICATED:

  
Sandy Chase, City Clerk.

APPROVED AS TO FORM:  
Office of the City Attorney

  
City Attorney

FILED WITH THE CITY CLERK:	08-20-2013
PASSED BY THE CITY COUNCIL:	08-20-2013
PUBLISHED:	08-25-2013
EFFECTIVE DATE:	08-20-2013
ORDINANCE NO. <u>3938</u>	

## **SUMMARY OF ORDINANCE NO. 3938**

of the City of Edmonds, Washington

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On the 20th day of August, 2013, the City Council of the City of Edmonds, passed Ordinance No. 3938. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, RELATING TO COLLECTIVE GARDENS AND THE RECREATIONAL USE OF MARIJUANA, ESTABLISHING AN IMMEDIATE EMERGENCY MORATORIUM ON THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES OR USES RELATING TO COLLECTIVE GARDENS, MARIJUANA PRODUCTION, MARIJUANA PROCESSING, OR MARIJUANA RETAILING, TO BE IN EFFECT UNTIL THE CITY OF EDMONDS ADOPTS ZONING REGULATIONS ADDRESSING SUCH MARIJUANA USES, AND ESTABLISHING AN IMMEDIATE EMERGENCY MORATORIUM ON THE SUBMISSION OF ANY BUSINESS LICENSE APPLICATIONS FOR SUCH USES, SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM, TO ALLOW THE WASHINGTON STATE LIQUOR CONTROL BOARD AN OPPORTUNITY TO COMPLETE ITS RULEMAKING FOR THE LICENSING OF SUCH USES AND TO ALLOW THE CITY TO STUDY THE SECONDARY LAND USE IMPACTS OF SUCH USES, ESTABLISHING THE DATE OF THE PUBLIC HEARING ON THE MORATORIUM AND DECLARING AN EMERGENCY.

The full text of this Ordinance will be mailed upon request.

DATED this 21st day of August, 2013.

  
CITY CLERK, SANDRA S. CHASE

# Affidavit of Publication

STATE OF WASHINGTON,  
COUNTY OF SNOHOMISH

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**SUMMARY OF ORDINANCE NO. 3938**  
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The full text of this Ordinance will be mailed upon request.  
DATED this 21st day of August, 2013.  
CITY CLERK, SANDRA S. CHASE  
Published: August 25, 2013.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Summary of Ordinance No. 3938

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

August 25, 2013

and that said newspaper was regularly distributed to its subscribers during all of said period.

*Karen E. Zorn*

Principal Clerk

Subscribed and sworn to before me this

26th

day of August, 2013

*Diana L. Hendrix*

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

